approximately [redacted] percent, from [redacted] to [redacted] even though the number of households in the Denver MSA increased by approximately 13 percent during the period from 2000 to 2005. *See* Brigham and Teitzel Declaration ¶ 5. Independent industry analysts identify ILEC access line losses to cable telephony providers as significant and continuing given "the widespread availability of cable telephony and its associated multi-service bundles."[39]

Since Qwest's wireline, VoIP, and cable telephony competitors are under no obligation to report customer in-service data, especially at the MSA level, precise measurements of competitor "shares" are not possible to obtain. However, independent research houses have addressed this issue by conducting primary customer research to quantify competitive telecommunications dynamics. For example, TNS Telecoms, an independent research firm, conducts a quarterly "share" analysis in each of the states to estimate competitors' shares of the residential telecommunications markets and to provide insights into the changes in competitive trends.[40] Brigham and Teitzel Declaration ¶ 6. In fourth Quarter 2000, TNS reported Qwest's share of residential communications connections in the Denver MSA at [redacted]. *Id.* By the fourth Quarter 2006, Qwest's share of residential communications connections in the Denver MSA had

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[39] *Regulatory Event **Risk** Headlines Fitch's U.S. Telecom Outlook for 2007,* November 29, 2006. *See* Brigham and Teitzel Declaration Exhibit 1, p.72.

[40] In conducting its study, TNS collects actual billing information from a statistically-reliable sample of customers in each state and tabulates the number of residential customers subscribing to Qwest service (landline, DSL or wireless) as well as services of non-Qwest landline and wireless competitors. TNS uses this data to calculate "shares of customer connections" (excluding video connections) for each service provider in the consumer telecommunications market. In calculating "connections shares," TNS defines a "connection" as any telecommunications service used by the customer. A residential access line, a wireless service and a broadband Internet line used by a customer would each be counted as a discrete "connection" under TNS' definition in its calculations of "connections shares." For example, a customer with Qwest landline service, Qwest DSL service and Verizon Wireless service would be counted as having three "connections," and Qwest's "connections share" in this example would be 66%. Brigham and Teitzel Declaration ¶ 6.

declined to [redacted]. *Id.* These data confirm that Denver-area consumers are utilizing substitutes for Qwest's service to satisfy their telecommunications needs.

In the *Sunset Order*, the Commission noted that the availability of wireless and VoIP constrains Qwest's market power given the large and growing percentage of customers who subscribe to both wireline service and wireless and/or broadband Internet access, and who thus have the ability to shift usage in response to price changes.[41] Although the Commission reached these conclusions in the context of analyzing the market for long distance services, the conclusions are applicable here because consumers have access to a similar multiplicity of platforms. Moreover, for those services such as wireless and over-the-top VoIP, where consumers pay an "all you can eat" price, once consumers have purchased these services for use with long distance services, there is no incremental cost for local use.

In sum, Qwest faces many substitutes for its wireline services. Increasing numbers of mass market customers subscribe to competitive wireline and cable services. Additionally, increases in subscriptions to broadband Internet access services allow customers to subscribe to over-the-top VoIP service. Moreover, there have been increased subscriptions to mobile wireless services, accompanied by a migration of wireline minutes to mobile wireless minutes. All of these trends indicate that consumers are increasingly finding that these alternative services serve as substitutes for Qwest's traditional wireline service offerings.[42] Thus, in the mass market, the enforcement of unbundling is not necessary to ensure that charges are just and reasonable, and not unjustly discriminatory; nor is unbundling necessary for consumer protection. Similarly, dominant carrier tariff regulation is no longer necessary to ensure that charges are just and reasonable, nor for consumer protection.

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[41] ***See*** *Sunset Order* ¶¶ 34, 37, 38.

[42] *See id.* ¶ 38.

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B. Enterprise Customers Also Have Access to a Wide Range of Competitive Alternatives

The provision of services to enterprise customers is also highly competitive. Moreover, the customers themselves are highly sophisticated purchasers of communications services.[43] They tend to make their decisions about communications services by using either communications consultants or employing in-house communications experts.[44] Accordingly, the Commission has previously expressed its expectation that enterprise customers are aware of the multitude of choices available to them,[45] and are able to take advantage of the competitive choices available to them, seeking out the best-priced alternatives.[46] In the *Omaha Forbearance Order,* the Commission decided to forbear from loop and transport unbundling based on competition from Cox, the incumbent cable operator, together with "maps and other evidence" that other competitors have deployed their own transport facilities, and additional evidence that competing carriers were using wholesale alternatives to compete successfully.[47] AS in the mass market, evidence demonstrates that "the level of facilities-based competition [in the Denver **MSA]** ensures that market forces will protect the interests of consumers."[48] **As** the Commission has previously found, numerous (categoriesof competitors provide services to enterprise

[43] *See id.* ¶ 46; *AT&T/BellSouth Merger Order* ¶ 82.

[44] *See Sunset Order* ¶ 46.

[45] *See id*

[46] *AT&T/BellSouth Merger Order* ¶ 82.

[47] *Omaha Forbearance Order,* 20 FCC Rcd at 19448¶ 66; see *id.*19448-49 ¶ *67.*

[48] *Id.* at 19416 ¶ 1.

customers.[49] These include cable companies, wireless providers, CLECs, data/IP network providers, VoIP providers, system integrators, and equipment vendors.[50]

1. Cable

Comcast‘s cable network in the Denver MSA is capable of -- and is -- being used to serve enterprise customers. In the *Omaha Forbearance Order,* the Commission found that Cox's cable facilities were "capable of delivering both mass market and enterprise telecommunications services."" The Commission relied on the fact that Cox had "strong success in the mass market, its possession of the necessary facilities to provide enterprise services, its technical expertise, its economies of scale and scope, its sunk investments in network infrastructure, its established presence and brand in the Omaha MSA, and its current marketing efforts and emerging success in the enterprise market."[52] The Commission also noted that Cox had particularly strong incentives to compete for enterprise customers, as compared to mass market, because the "revenue potential" is greater.[53] The Commission concluded that, in light of these facts, "Cox poses a substantial competitive threat . . . for higher revenue enterprise services."[54] In reaching this conclusion, the Commission found the fact that Cox's existing network did not necessarily reach every individual business location as "not . . . dispositive" in light of the other evidence demonstrating Cox's incentives and ability to serve these customers.[55]

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[49] ***Sunset** Order* ¶ *30.*

[50] *See id.; AT&T/BellSouth Merger Order* ¶ 70.

[51] *Omaha Forbearance Order,* 20 FCC Rcd at 1 448 ¶ 66

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.* ¶ *66* n. 174.

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This same analysis applies with equal force in the Denver MSA. As demonstrated above, Comcast has had "strong success in the mass market" in the Denver MSA. Moreover, it has a nearly ubiquitous network and therefore possesses "the necessary facilities to provide enterprise services." Indeed, Comcast recently announced that its "next great business opportunity" is to sell Internet, voice and video services to businesses. Brigham and Teitzel Declaration ¶ 18. Comcast's target is to capture 20% of the business phone market in five years. *Id.* Comcast already markets services to business customers, including Internet access service and pay TV, and plans to launch voice services in 2007. *Id.* In the meantime, Comcast is arranging for its Denver-area business customers to receive digital voice services through its strategic cross-marketing arrangement with Greenwood Village-based IP5280 Communications (a VoIP services provider). *Id.* This arrangement calls for Comcast to refer business customers interested in VoIP to IP5280, which in turn will refer its customers to Comcast's data services. IP5280 acknowledged that the deal was "a temporary stopgap before Comcast introduces its own VoIP offering for businesses." *Id.*

2. Wireline CLECs

Second, a large number of other competitors provide extensive business retail competition in the Denver MSA. As stated above, CLECs are utilizing Qwest resale or QPP/QLSP wholesale services to compete with Qwest in every wire center in the Denver MSA. Brigham and Teitzel Highly Confidential Exhibit 2. Qwest estimates that CLECs competing through QPP/QLSP and Resale are providing approximately [redacted] business lines. *Id.* This does not take into account any CLECs competing via Special Access services, CLEC-owned switches and loops or network facilities leased from non-Qwest providers.

As explained above, in connection with mass market service, to the extent CLECs are utilizing their own networks to serve enterprise customers in the Denver **MSA,** Qwest has no means to obtain precise in-service access line counts for these CLECs. However, Qwest does track the number of white pages listings, by rate center, of CLECs that are "facilities-based" (those utilizing CLEC-owned switches and loops and/or CLEC-owned switches and unbundled loops or Special Access services purchased from Qwest), and Qwest can thereby estimate the number of lines served by such CLECs, based on Qwest's internal data showing that about 36% of its business lines[56] are listed in the white pages directories. Brigham and Teitzel Declaration n.66. Based upon white pages listings data as of January 2007, and presuming facilities-based CLECs' customers choose to list their telephone numbers in the white pages directory in the same proportions as Qwest's customers, there were approximately [redacted] business lines associated with facilities-based CLECs in the rate centers in the Denver MSA. *Id.* ¶ 23.

In the *Omaha Forbearance Order,* the Commission also considered "evidence that a number of carriers . . . had success competing for enterprise services using DS1 and DS3 special access channel terminations obtained from Qwest" as relevant in its analysis of enterprise competition.[57] The Commission held that "this competition that relies on Qwest's wholesale inputs -- which must be priced at just, reasonable and nondiscriminatory rates . . . supports our conclusion that section 251(c)(3) unbundling obligations are no longer necessary to ensure that the prices and terms of Qwest's telecommunications offerings are just and reasonable and nondiscriminatory under section 10(a)(1)."[58]

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[56] In particular, business customers often elect to list only their primary telephone number in the white pages directory. To the extent customers of facilities-based CLECs do not request that their telephone numbers be reported to Qwest for input to the white pages database, these telephone numbers are not reflected in the facilities-based CLEC customer white pages listings at all. Brigham and Teitzel Declaration n.66.

[57] *Omaha Forbearance Order,* 20 FCC Rcd at 19449-50 ¶ 68.

[58] *Id.* (Footnote omitted.) The forbearance that Qwest seeks here will not eliminate Qwest's obligations under Sections 201 and 202 to provide its services on just and reasonable, nondiscriminatory terms.

As in Omaha, competitors in the Denver MSA are competing extensively using Special Access obtained from Qwest. As of December 2006, competitors purchased over [redacted] Special Access channels from Qwest in the Denver MSA. Brigham and Teitzel Declaration ¶ 32. The number of VGE circuits being provided by competitors using Qwest Special Access services exceeds the number of VGE circuits being provided by CLECs using UNEs, QPP/QLSP, and resale combined. *Id.* Over [redacted] of the Special Access VGEs in the Denver MSA are in wire centers that also have competitive fiber in place. *Id.* ¶ 33.

There are numerous CLECs competing with Qwest for enterprise customers within the Denver MSA. A prominent wireline competitor is AT&T, the largest telecom company in the country, which offers a wide range of telecommunications services to both residential and business customers in the Denver MSA. It has over [redacted] route miles of fiber within the MSA, which allow it to provide a wide range of services without relying on the purchase of Qwest wholesale services. *Id.* ¶ 24. Notably, AT&T has a Metropolitan Area Acquisition ("MAA") contract with the General Services Administration, which allows federal agencies throughout most of the Denver MSA to "take advantage of [AT&T's] advanced technologies, network reliability and competitive rates." *Id.*

Although, Qwest's share of the business market is declining, Cbeyond Communications, another CLEC, is experiencing growth. Cbeyond focuses on small business customers along Colorado's Front Range, including the Denver MSA. *Id.* ¶ 25. Cbeyond's Denver market revenues grew by 17% between December 2005 and December 2006. *Id.*

3. System Integrators, IP-Enabled Service Providers and Other Competitors

Third, as the Commission recently acknowledged in the context of the AT&T/BellSouth merger, "systems integrators and the use of emerging technologies, including various Internet

Protocol enabled (IP-enabled) technologies, are likely to make [the enterprise] market more competitive, and this trend is likely to continue in the future."[59] Demand for systems integrators is driven by the need for the extensive planning and management necessary to create communications systems blending voice, data, video, Internet, and wireless applications. Brigham and Teitzel Declaration ¶ 58. In the enterprise market, nearly half of all medium and large enterprises use some form of managed telecommunications and IT services. *Id.* The North American managed telecom service market generated $18.6 billion in revenues in 2006.[60] Equipment vendors and systems integrators such as IBM, New Edge Networks, Mammoth Networks, and others compete in the Denver MSA. *Id.* For example, New Edge provides managed telecom services to small businesses, large corporations and telecom carriers. *Id.* ¶ 59. IBM helps customers "design, deploy and manage an IP telephony infrastructure that can help reduce the costs associated with inanaging and maintaining separate voice, and data and equipment networks." *Id.* Maminoth Networks provides DSL, Frame Rely and ATM service aggregation, allowing customers to connect circuits to its network. *Id.*

The increasing role of system integrators in the enterprise market may be based in **part** on the fact that VoIP providers are also making competitive inroads into the enterprise market. In 2005, *36%* of large and *23%* of medium North American organizations interviewed by a major research firm were already using VoIP products and services. That research firm estimated that by 2010, almost half of small and two-thirds of large organizations in North America would be using VoIP products and services. Brigham and Teitzel Declaration ¶ 48. **A** number of VoIP competitors serve the Denver MSA, and some are headquartered in the MSA. IP5280, a Denver-based company, sells VoIP services targeted to enterprise business customers. It specializes in

[59] See *AT&T/BellSouth Merger Order* ¶ 81.
[60] *Id.* n.172.

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VoIP and converged IP Voice and data services, and is partnering with WavMax and Comcast. *Id.* WavMax, headquartered in Littleton, Colorado, offers wireless broadband in at least 25 communities in the Denver area. WavMax also offers VoIP service to business, with prices starting at $35 "per seat" per month for local service and unlimited long distance calling. *Id.* ¶ 41. SimpleSignal, a, California.-based VoIP competitor, has a Denver-area office. It also targets business customers, particularly medium-sized businesses. *Id,* ¶ 47.

4. Competitive Fiber

Finally, there are extensive competitive fiber networks in the Denver MSA. According to GeoTel, a leading provider of telecommunications facilities information, approximately [redacted] miles of fiber (excluding fiber owned by Qwest and Qwest's affiliates) are now in place in the Denver MSA, and this fiber is typically used by Qwest's competitors to serve enterprise and wholesale customers. Brigham and Teitzel Declaration ¶ 34. At least one fiber-based competitor has facilities in [redacted] of Qwest's wire centers in the Denver MSA, and these wire centers contain [redacted] of Qwest's residential lines and [redacted] of Qwest's retail business lines in the MSA. *Id.* In addition, competitive fiber is now being used to serve over [redacted] buildings in the Denver MSA. *Id*.

Carriers with significant fiber facilities in the Denver MSA include [redacted]. Brigham and Teitzel Declaration ¶ 35. Confidential Exhibit 4 shows the known fiber routes for 20 entities with competitive fiber facilities in the Denver MSA. Given these significant facilities-based competitors who can provide retail or wholesale services, it is clear that Qwest faces competition in its efforts to reap more revenue "indirectly from retail customers who choose a retail provider other than Qwest."[61]

5. Decline in Qwest's Retail Lines

Given the competition from Comcast, wireline CLECs, systems integrators, VoIP providers, entities with competitive fiber networks, and other players it is not surprising that Qwest has lost a significant proportion, [redacted], of its retail business lines between December 2000 and December 2006. Brigham and Teitzel Declaration ¶ 5. Qwest had [redacted] business retail access lines in December 2000, and just [redacted] in December 2006. ***Id*** Just as in the mass market, developing precise measurements of business "share" in the business market is difficult, given the diverse scope of intramodal and intermodal competition that now exists in the Denver MSA and the general lack of available customer in-service data for these competitor:;. However, TNS Telecoms conducts primary research in the small business and Enterprise business segments and has assembled "revenue share" estimates for those markets as indicators of'competitive trends. In stratifying the business market, TNS classifies businesses generating less than $1,500 in monthly telecom spending as small business customers, and business customers spending at or above this level as "enterprise" business customers. Brigham and Teitzel Declaration ¶ 7. In the small business category, TNS' research shows that Qwest's revenue share in the Denver MSA was [redacted] in fourth Quarter 2006. *Id.* In the enterprise market, Qwest's revenue share in the Denver **MSA** was [redacted] in fourth Quarter 2006. *Id.* These data confirm that Denver MSA businesses are utilizing substitutes for Qwest's service to satisfy their communications needs. particularly at the high end

[61] ***Omaha Forbearance Order,*** 20 FCC Rcd at 19448-49 ¶ 67.

of the market. Systems integrators and the increased use of IP-enabled technologies are likely to make this market more competitive in the future.

III. THE THIRD PART OF THE FORBEARANCE TEST IS SATISFIED BECAUSE THE REQUESTED RELIEF IS IN THE PUBLIC INTEREST

As the Commission found in the *Omaha Forbearance Order,* evidence of competition satisfies not only the first two prongs of the forbearance test, but also supports a finding that the third prong of the forbearance test is met, *i.e.* it is in the public interest to eliminate the regulations in question.” In the *Omaha Forbearance Order* the Commission also identified two additional reasons why forbearance from the regulations at issue was in the public interest. Both reasons apply with equal force in the Denver MSA.

First, as the Commission found in Omaha, the costs of the unbundling obligations that Qwest faces in the Denver MSA outweigh the benefits. Both the Commission and the D.C. Circuit have recognized the harm to the public interest and to competition from excessive unbundling. As the Commission has explained, "excessive network unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology."[63] Similarly the D.C. Circuit has recognized that mandated unbundling "imposes costs of its own, spreading the disincentive to invest in innovation and creating complex issues of managing shared facilities."[64] Given the extensive facilities-based competition that already exists in the Denver MSA, and the potential for even greater facilities-based competition to emerge, any potential benefits from unbundling regulation are slim, while

[62] ***See*** *Omaha Forbearance Order*, 20 FCC Rcd at 19437 ¶ 47, 19453 ¶ 75.

[63] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 16984 ¶ 3 (2003) (subsequent history omitted).

[64] *United States Telecom Ass 'nv. FCC,* 290 F.3d 415,427 (D.C. Cir. 2002).

the costs of such regulatory intervention are significant.[65] Forbearance will give Qwest and other facilities-based competitors, greater incentives to continue to invest in facilities, which will ensure the continued growth of long-lasting facilities-based competition.

Eliminating unbundling regulation will also "further the public interest by increasing regulatory parity" among telecommunications providers in the Denver MSA. These regulations were imposed at a time when Qwest's narrowband circuit-switched network was a dominant technology but this is far from the case today. Qwest is now losing mass market and enterprise lines and customers to wireless and broadband competitors. **As** the Commission noted, it is "in the public interest to place intermodal competitors on an equal regulatory footing by ending unequal regulation of services provided over different technological platforms."" In the face of such competition, asymmetrical regulation imposes artificial price constraints that delay and impede full and fair competition among providers and harms consumers.[67]

Second, as the Commission also found in Omaha, eliminating dominant carrier regulations that apply to interstate switched access services is consistent with the public interest where vigorous local competition has emerged.[68] As demonstrated above, cable voice services in the Denver MSA are more widely available than they were in Omaha, and other types of competition are even more widespread than they were in December 2005 when the Commission issued the *Omaha Forbearance Order*. Moreover, with respect to interstate switched access

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[65] *See Omaha Forbearance Order*, 20 FCC Rcd at 19454 ¶ 77.

[66] *Id.* at 19454-55 ¶ 78.

[67] *See, e.g., In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities,* Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14878 ¶ 45, 14890-91 ¶ 71, 14895-96 ¶ 79 & n.241 (2005), *appeal pending sub nom. Time Warner Telecom v. FCC*, No. 05-4769 (and cons. cases) (Third Cir.), *oral argument held*, Mar. 16, 2007.

[68] ***See*** *Omaha Forbearance Order, 20* FCC Rcd at 19437 ¶ 47.

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services, competitive wireless services are particularly significant because customers can use their wireless phones for long-distance calls even where they do not abandon their wireline phone entirely. In fact, large fractions of long distance calls and minutes have already migrated to wireless. Brigham and Teitzel Declaration ¶ **38.**

As the Commission found in Omaha, eliminating dominant carrier regulation for interstate switched access services also will promote the public interest by eliminating the unnecessary costs such regulations impose. In particular, "[i]n these environments that are competitive for end users, applying these dominant carrier regulations to Qwest limits its ability to respond to competitive forces and, therefore, its ability quickly to offer consumers new pricing plans or service packages."[69]

The Commission has similarly recognized in other contexts that certain "regulations associated with dominant carrier classification can also have undesirable effects on competition."[70] For example, the Commission has recognized that tariffing requirements "impose significant administrative burdens on the Commission and the BOC[s]," and "adversely affect competition."" Such regulations reduce the incentive and ability to discount prices in response to competition and to make efficient price changes in response to changes in demand and cost. Likewise, the Commission's price cap regulations limit Qwest's ability to respond to market conditions and competition. Unlike other providers in the Denver **MSA,** to whom price

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[69] *Id.*

[70] *In the Matter of Regulatory Traatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace,* Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756,15808 ¶ 90 (1997) ("*LEC Classification Order"), on recon.* 12 FCC Rcd 8730 (1997), *Order,* 13 FCC Rcd 6427 (1998), *on further recon.,* 14 FCC Rcd 10771 (1999); *see also Sunset Order* ¶ **78.**

[71] *LEC Classification Order,* 12 FCC Rcd at 15807 ¶ 89.

cap regulation does not apply, Qwest is restricted from responding to competition with deaveraged rates and cannot respond to competitors’ bundled service offerings. Competitors also can use these regulations to their advantage, both to undercut each others’ pricing or to maintain artificially high prices.

For these reasons, dominant carrier regulation of the switched access market is not only unnecessary to ensure just, reasonable, and not unjustly or unreasonably discriminatory rates, and to protect consumers, but it also impedes Qwest’s ability to compete,[72] dampens competition,’’ and is thus harmful to the public interest.

IV. CONCLUSION

For the foregoing reasons, Qwest requests that in the Denver MSA the Commission forbear from loop and transport unbundling regulation, dominant carrier regulation, price cap regulation of switched access services and CEI/ONA requirements.

Respectfully submitted,

QWEST CORPORATION

By: __________________________

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April 27, 2007

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[72] ***See Sunset Order*** ¶ 78.

[73] ***See id.***

Before the
FEDERAL, COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter o	)	
	)	
Petition of Qwest Corporation for	)	
Forbearance Pursuant to	)	WC Docket No.___________
47 U.S.C. § 160(c) in the	)	
Denver Metropolitan Statistical Area	)	

DECLARATION OF ROBERT H. BRIGHAM AND DAVID L. TEITZEL
REGARDING THE STATUS;OF TELECOMMUNICATIONS COMPETITION IN THE
DENVER. COLORADO METROPOLITAN STATISTICAL **AREA**

I. INTRODUCTION AND SUMMARY.

1. My name is Robert H. Brigham. My business address is 1801 California Street, Denver, Colorado 80202, and I am currently employed by Qwest Service Corporation ("QSC")[1] as a Staff Director in the Public Policy department. In my current position, I develop and present Qwest's advocacy before regulatory bodies concerning pricing, competition and regulatory issues. I have been employed by Qwest and its predecessor companies for over 30 years, holding various management positions in Marketing, Costs and Economic Analysis, Finance and Public Policy. I have testified before numerous state commissions in the Qwest region.

[1] QSC performs support functions, such as regulatory **support,** for other Qwest entities.

2. My name is David L. Teitzel. My business address is Room 3214, 1600 7th Ave., Seattle, WA 98191. My title is Staff Director and I am a member of QSC's Public Policy organization. In that position I develop and present company advocacy in matters relating to the manner in which Qwest Corporation ("Qwest") is regulated for retail services. These matters include regulatory reform in dockets before state Commissions and the FCC. I have been employed by Qwest and its predecessor companies for over 32 years and have held a number of management positions in various departments, including Regulatory Affairs, Network and Marketing.

3. The purpose of this declaration is to demonstrate that extensive competition exists for Qwest's mass market and enterprise telecommunications services in the Denver Metropolitan Statistical Area ("MSA") from a wide variety of intramodal and intermodal competitors. Consistent with the analytical framework the Commission applied to Qwest's earlier forbearance request with respect to the Omaha MSA, our declaration provides facts and evidence demonstrating that these competitors are actively competing with Qwest in the Denver MSA via a full range of telecommunications service platforms. Many competitors compete for customers by building their own facilities or utilizing other non-Qwest facilities (including competitive fiber cable networks, coaxial cable networks, wireless services, internet-based services, etc.). Competitors also compete via the purchase of wholesale services from Qwest, including Unbundled Network Elements

(“UNEs”), Qwest Platform Plus (“QPP”), Qwest Local Services Platform (“QLSP”),[2] Special Access services, and retail services sold at a resale discount.

4. Our declaration and associated exhibits contain information obtained from publicly-available sources and internal Qwest databases, and the sources of data upon which we rely in this declaration are fully identified. We attest that all Qwest data in this declaration is accurate as of the filing date of Qwest’s petition in this proceeding and that any information obtained from non-Qwest sources is shown precisely as it is reported by the source. A summary of the competitive information in our declaration is set forth below.

5. As of 2005, U.S. Census data shows that there were approximately 1.01 million households and 2.36 million people in the Denver MSA,[3] up from 0.89 and 2.19 million respectively in 2000.[4] Clearly, the Denver MSA is experiencing a steady growth trend, with households increasing 13% and population increasing 8% over this timeframe. It can be conservatively assumed that demand for telecommunications services in the Denver area has increased apace. However, despite this upward trend in housing and population, Qwest’s retail access line base in the Denver area has fallen sharply since 2000 as residential and business customers have availed themselves of the expanding array of competitive alternatives to Qwest’s services. As shown in Table 1 below, Qwest’s retail

[2] In January 2007. CLECs began converting their QPP-based services to the new Qwest Local Services Platform (“QLSP”) wholesale service as discussed later in this declaration.

[3] The Denver MSA encompasses Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas. Elbert, Gilpin, Jefferson and Park Counties.

[4] http://www.census.gov/popest/housing/HU-EST2005-CO.html; http://www.census.gov/population/www/estimates/Estimates%20pages_final.html (Table 1).

Retail Service	Dec. 2000	Dec. 2006	Difference	% Difference
Residential	[redacted]	[redacted]	[redacted]	[redacted]
Business	[redacted]	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]	[redacted]

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These access line trends are driven by the proliferation of intramodal and intermodal competitive alternatives to Qwest's services in the Denver **MSA,** and the range of alternatives continues to expand, as we discuss in our declaration.

6. The mix of competitive alternatives in the Denver MSA continues to evolve. Traditional competitors, such as CLECs, continue to aggressively compete with Qwest and intermodal competitors, such as wireless and Voice over Internet Protocol ("VoIP")[6] providers, are rapidly gaining **a** significant share of the telecommunications market. It is noteworthy that CLECs are lightly regulated and intermodal competitors are generally

[5] These results exclude any access line losses occurring prior to December 2000 and therefore understale the extent of competitive losses in the Denver **MSA.**

[6] VoIP services are **now** offered on a "stand-alone" basis **by** providers such as Vonage, SunRocket, Packets. elc., as well as on an "integrated" basis **by** Cable MSOs such as Comcast, Bresnan. etc.

subject to even less regulation. Since these competitors are under no obligation to report customer in-service data,' especially at the MSA level, precise measurements of competitor "shares" are not possible to obtain. However, independent research houses have addressed this void by conducting primary customer research to quantify competitive telecommunications dynamics,, and Qwest has purchased such research to gain insights into market trends.

For example, TNS Telecoms, an independent research firm, conducts a quarterly "share" analysis in each of the states to estimate competitors' shares of the residential telecommunications markets. TNS collects actual billing information from a statistically-reliable sample of customers in each state' (and select MSAs) and tabulates the number of residential customers subscribing to Qwest service (landline, DSL or wireless) as well as the services of Qwest's landline and wireless competitors. TNS uses this data to calculate "shares of customer connections" (excluding video connections) for each service provider in the consumer telecommunications market.' TNS defines a "connection" as any telecommunications service used by the customer. For example, a residential access line, a wireless service and a broadband internet line used by a customer would each be counted as a discrete "connection" under the TNS definition. Thus, a customer with

7 The regulatory status of local telephone service provided by VolP technology is the subject of an open FCC proceeding (IP-Enabled Services, WC Docket No. **04-36,** Notice of Proposed Rulemaking, 19 FCC Rcd **4863).** Currently, telecom providers are not required by FCC instructions for Form 477. which is the reponing tool used by telccom providers io report in-service access line counts to the FCC, to report VolP-based access lines. If the FCC rules in its pending IP services proceeding that VolP service is a telecommunications service, providers of these services may he required to report in the future access lines served via VolP. However, *until* that time, providers utilizing VolP *to* provide telecom services are not required to report in-service data to the FCC.

8 In Qwest's 14-state territory, the TNS research sample is drawn strictly from exchanges within the Qwest service area footprint and does not include data from Independent service territory.

9 TNS Telecoms does not conduct **a** "connections share" analysis for the business market. and instead produces a "share of total telecom spend" analysis for the business segment.

Qwest landline service, Qwest DSL service and Verizon Wireless service would be counted as having three "connections," with Qwest holding a ***66%*** "connections share."

In fourth quarter 2000, **TNS** reported that Qwest's share of residential customer connections in the Denver MSA was [redacted]. By fourth quarter 2006, Qwest's share of residential communications connections in the Denver MSA had declined to [redacted].[10] This data confirms that an increasing number of Denver-area consumers are utilizing non-Qwest telecom alternatives to satisfy their telecommunications needs.

7. It is equally difficult to develop precise measurements of "share" in the business markets given the diverse scope of intramodal and intermodal competition that now exists in the Denver MSA, and the general lack of available customer in-service data for these competitors. However, TNS Telecoms also conducts primary research in the small business and enterprise business segments and has assembled "revenue share" estimates for these markets that indicate competitive trends." TNS classifies businesses generating less than $1,500 in monthly telecom revenues as "mass market" business customers and businesses generating monthly revenues at or above this level as "enterprise" business customers. The TNS research shows that as of the fourth quarter of 2006, Qwest's share of Denver MSA revenues was [redacted] for the small business market and [redacted] for the enterprise market.[12] Thus, a large and expanding proportion of <u>both</u> small and

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[10] Source: TNS Telecoms. February 2007.

[11] TNS Telecoms does not collect "connections share" data in the business market. and instead, determines "revenue share" for the various competitors in the market based on the amount of monthly spending of the survey respondents with each telecommunications service provider from whom they report they are purchasing service.

[12] Source: TNS 'Telecoms, February 2007.

enterprise business customers in the Denver MSA are purchasing a wide array of telecommunications services from Qwest's competitors, as described in the following sections of our declaration.

8. Comcast Communications, the predominant cable provider serving the Denver MSA, aggressively competes with Qwest in the telecommunications market.[13] As of December 2006, Comcast was serving a geographic area encompassing Qwest wire centers that account for approximately [redacted] of the Qwest retail residential lines and [redacted] of the Qwesit retail business lines in the Denver MSA.[14] As discussed later in this declaration, Comcast competes with Qwest by utilizing its own extensive coaxial cable and fiber network and Comcast-owned switches. Comcast offers a broad range of telecommunications services to residential, small business and enterprise business customers in the Denver MSA.

9. In addition to Comcast, there are at least [redacted] unaffiliated CLECs actively competing with Qwest in the Denver MSA, ranging from national CLECs such as AT&T, McLeodUSA and XO Communications, to regional CLECs such as Cbeyond, Eschelon and Liberty Bell. **As** discussed in following sections of our declaration, these CLECs are serving residential customers as well as business and governmental customers of virtually

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[13] The competitive dynamics regarding Comcast in the Denver MSA are similar to the competitive dynamics in the Omaha MSA, where the Commission has previously reviewed and ruled upon a Qwest forbearance petition.

[14] Based on Comcast media coverage map of the Denver, CO DMA. The coverage area of the Comcast media map was compared to the list ofcommunities Comcast has reported to the FCC it now serves in the Denver MSA to confirm the accuracy of the Comcast DMA map for the greater Denver area (see http://www.fcc.gov/mb/engineering/liststate.html); http://www.comcastspotlight.com/www/common/media/rocky_mountian/denver_metro.pdf. See Exhibit 1, Page 1

all sizes. As of December 2006, CLECs are competing with Qwest in 100% of the wire centers in the Denver MSA.[15]

10. A significant amount of fiber optic cable has been placed by competitive service providers in the Denver MSA, and this fiber is used to bypass Qwest's network. According to GeoTel, approximately [redacted] miles of fiber ***(excluding*** fiber owned by Qwest and Qwest's affiliates) has been placed in the Denver MSA. This fiber is typically used by Qwest's competitors to serve enterprise and wholesale customers.[16] The GeoTel data shows that at least one fiber-based competitor is present in [redacted] of Qwest's wire centers in the Denver MSA, and these wire centers contain [redacted] of Qwest's retail residential lines and [redacted] of Qwest's retail business lines in the Denver MSA. In addition, competitive fiber is now used to serve nearly [redacted] buildings in the Denver MSA.[17]

11. Landline-based competitors are also using special access services purchased from Qwest to serve customers in the Denver MSA. As of December 2006, competitors purchased over [redacted] voice grade equivalent ("VGE") special access channels in this geographic area—a number that exceeds the number of VGE circuits provided to CLECs via unbundled network elements, Qwest Platform Plus and resale combined.

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[15] Source: Qwest Wholesale Database, December 2006.

[16] GeoTel continually works to update its data regarding fiber-based competitors and provides updated data approximately every **six** months. However, GeoTel does not possess complete data regarding each fiber-based competitor. and the data reported above is therefore likely understated. GeoTel data underlying the numbers above was provided to Qwest in Octobcr 2006.

[17] Source: GeoTel, October 2006.

12. Wireless service is used as a direct substitute for traditional landline service by an ever-increasing number of customers and is contributing to Qwest's retail access line reductions. At least five major wireless service providers, including Verizon, AT&T, T-Mobile, Sprint and Cricket, are now providing service in the Denver MSA,[18] with at least one wireless provider providing service in every Qwest wire center. The Commission's recent Commercial Mobile Radio Services ("CMRS") report released on September 29, 2006 cites to various sources in estimating that 6 to 12 percent of U.S. households have replaced their landlines with wireless service." Other independent research suggests that the proportion of customers who have "cut the cord" in the Denver MSA may be at the high end of this range. On October 18 2006, Telephia, **an** independent research entity specializing in Consumer market research, released the results of primary research showing that 11.3% of the households polled in the Denver metropolitan area used only wireless service in their homes and no longer subscribed to landline telephone service.[20] There can be no doubt that wireless service represents a significant and growing form of direct competition to Qwest's landline service business in the Denver MSA.

As discussed later in our declaration, the number of wireless subscribers in Colorado climbed to 3.4 million in June 2006 and now <u>significantly exceeds</u> the number of ILEC and CLEC lines <u>combined</u> in the state. Further, as described later in our declaration,

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[18] Qwest also provides wireless service in the Denver MSA. According to an analysis by TNS, however, Qwest holds only an [redacted] share of the consumer wireless market in the Denver and Boulder MSAs.

[19] CMRS Report at **pp.** 89-90.

[20] ***Midwesterners Cut the Cord: Households in Detroit und Minneapolis-St. Paul Have The Nighest Rate of Wireless Substitution Among 20 Largest U.S. Cities, According*** to *Telephia*: Oct. **18,** 2006. See Exhibit 1, Page **3.** Research conducted during second Quarter 2006 in 20 major U.S. markets.

Yankee Group research found that more than 51% of local calls and 68% of long distance calls have been replaced by wireless. As customers with both a wireless and wireline phone find that an increasingly significant proportion of their voice calls (as well as internet access functionality) can be accommodated via cellular phones, an even greater proportion of Qwest's residential and business landline customer base will be encouraged to "cut the cord."

II. CABLE SERVICES COMPETITION.

13. The Denver MSA is served almost exclusively by one major cable Multi Service Operator ("MSO) – Corncast?' Prior to its acquisition of Adelphia Cable in July 2006,[22] Comcast reportedly provided cable television, telephony and/or high-speed internet service to 700,000 Colorado subscribers.[23] "Comcast Spotlight" data provided on its web site indicates that Comcast now serves almost 800,000 cable households in Colorado, with almost 525,000 of these households in the Denver MSA.[24] **A** detailed map of Comcast's network in the Denver MSA is proprietary and not available to Qwest. However, the

21 US Cable serves at least some customers in the communities of Arvada, Evergreen and Golden. and Champion Broadband reports serving customers in Lakewood. Neither of these companies offers phone service. hut both provide broadband internet service, enabling their customers to purchase VoIP telephone services from independent VoIP providers. However, these four wire centers are also served by Comcast. which aggressively offers voice telephone service in addition to its cable television and broadhand internet services.

22 Adelphia served 100.000 cable subscribers in the Colorado Springs area

23 http://www.denverpost.com/search/ci_3984025. *See* Exhibit 1. Page 5.

24 On its "Comcast Spotlight" website, Comcast reports its media coverage area and the number of cable households in Colorado and in the Denver Designated Market Area ("DMA). DMA is a term commonly used in the media industry io define geographic coverage areas for advertising purposes. The data provided as Exhibit 1, pages 1 and 2, includes the number of Colncast cable households in each Colorado DMA, along with a map of its coverage area in the Denver DMA. This data is offered to potential advertisers as arepresentation of the geographic reach advertisers can expect when using the Comcast network to distribute advertising. and represents **a** reasonable approximation **of** Comcdst's network facilities footprint within the Denver DMA.

"Comcast Spotlight" map presented on the Comcast web site (See Exhibit 1, pages 1 and 2) clearly shows that Comcast's cable coverage area encompasses nearly the entire Denver MSA. In fact, according to this Comcast media coverage map, the Comcast network serves Qwest wire centers that contain approximately [redacted] of Qwest's residential lines and over [redacted] of Qwest's switched business lines in the Denver MSA.[25]

Comcast has reported that nationally, it provides cable service to 24.2 million of the 45.7 million homes it passes, for a penetration rate of 51.3%.[26] In a May 2006 presentation by Comcast to the Colorado Office of Consumer Counsel ("OCC") Comcast reported that its network (prior to its acquisition of Adelphia) passed 1.4 million homes in Colorado.[27] Given approximately 700,000 video customers (prior to the Adelphia acquisition), the penetration rate in Colorado was approximately 50% at that time.

14. Comcast Digital Voice ("CDV") service, which utilizes VoIP technology, is available to virtually all of its customers in the Denver MSA,[28] and Comcast is marketing its CDV offering aggressively, as described below. Comcast reported to the Colorado OCC that it projected about one-third of its customer base would subscribe to CDV.[29] With approximately 525,000 cable households in the Denver MSA, this would equate to

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[25] Source: Qwest Forecast Data Mart data as of December 2006

[26] Comcast 10K, filed with the SEC on February 28.2007. page *3*

[27] Colorado Office of Consumer Counsel Meeting Minutes. May, 2006. See Exhibit I, Page 6.

[28] According to the aforementioned presentation to the Colorado OCC, Comcast passes "roughly 1.4 million homes" and "about 1.4 million homes" have the option to order CDV.

[29] *Id.*